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STEVENS, DAVIS, MILLER & MOSHER, L.L.P.
Suite 850
1615 L Street, N.W.
Washington, DC 20036

EXAMINER

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3637

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 19

Application Number: 09/821,802
Filing Date: March 30, 2001
Appellant(s): KETTLER ET AL.

Thomas P. Pavelko, Esquire
For Appellant

MAILED

APR 5 - 2004

GROUP 3600

EXAMINER'S ANSWER

This is in response to the appeal brief filed 01/29/04.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is substantially correct. The changes are as follows: the second issue should have been whether the Examiner erred in finally rejecting claims 2-3, 5-6, 10-11, and 13 under USC 102(b) as being anticipated by Moriau et al (6006486); the third issue should have been whether the examiner committed reversible error in finally rejecting claim 12 under 35 USC 103 (a) as being unpatentable over Moriau et al in view of Roy et al (6216409).

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(7) Grouping of Claims

Appellant's brief includes a statement that claims 2-6, 10-14 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8). However, the statement appears to be incorrect and the claims should stand or fall together as followed: claims 2-3, 5-6, 11, 13, claim 10, claim 4, claim 14. This corrected grouping is set forth by applicant's arguments and reasonings.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6006486	Moriau et al	12-1999
5274979	Tsai	1-1994
6216409	Roy et al	4-2001

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Applicant has clearly pointed out that only a single board is claimed. The claims below will thus be examined in scope accordingly.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 2-3, 5-6, 10-11, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Moriau et al (6006486).

Moriau et al (figures 5-7) shows a parquet board with a groove and tongue edge profile comprising an upper decorative surface (7, col 9 lines 10-15 discloses the surface covered paper which is inherently decorative by nature) atop a core (8), a projecting tongue (31) on at least one edge of each parquet board and a receding groove (32) on at least one other edge of the parquet board, the top edge of the tongue having a projecting locking lip (33, the face 7 being the top surface) running in the longitudinal direction of the tongue, a corresponding locking recess (39) being providing running the longitudinal direction of the groove, the edge of the board defining the groove having a top groove cheek (34) a bottom groove cheek (42), the recess being formed in the lower portion of the top groove cheek, the top and bottom groove cheeks defining an entry for the groove, the bottom groove cheek being shorter than the top groove cheek, a gradation (WP, appendix B) being provided on the bottom groove cheek widens only a portion of the groove and a tapered surface (TP, appendix B) being provided between the widened portion of the groove and the remainder of the groove, the tongue being provided in its root portion with a section of greater thickness than the remainder of the tongue forming a thicker tongue portion (RP, appendix B) via a linear tapered surface, the thickness in the remaining portion of the tongue being connected to the thicker tongue portion via a tapered surface (TP2, appendix B, 40, 38), the thicker portion of the tongue being not yet engaged in the graduated portion when the lip enters the groove during assembly of the board, the entry edge of the top groove cheek being

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provided with a tapered surface (41), the locking lip having an edge closest to a free end of the tongue and the edge being provided with a tapered or rounded surface (30, 40), the tongue being sized such that when in an assembled position with an adjacent board the tongue does not have the length which completely fills the groove and hence a gap between the tongue and an end of the groove (figure 7, 32), at least a small gap (figure 7, G) between an edge of the locking lip and the corresponding edge of the recess when the board is assembled with an adjacent board, at least a small gap between the tapered surfaces (TP, and TP2) on the groove and on the tongue, the board being an elongated rectangle.

Moriau et al shows all the claimed structures. Moriau et al's boards inherently can function as claimed.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moriau et al (6006486) in view of Roy et al (6216409).

Moriau et al shows all the claimed limitations except for the end of the tongue on a bottom side having a tapered surface.

Roy et al shows a tapered surface (12, figure 2) on a bottom side of the end of the tongue to enable easy insertion of the tongue into the groove.

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It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Moriau et al to show the end of the tongue on a bottom side having a tapered surface because it would enable easy insertion of the tongue into the groove as taught by Roy et al.

5. Claims 4, 13, 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsai (5274979) in view of Moriau et al (6006486).

Tsai (figure 2) shows a parquet board having a tongue and groove edge profile comprising an upper decorative surface (24b) atop a core, the top of the tongue having a projecting lip (19) running the in the longitudinal direction of the tongue, a corresponding locking recess (29) is provided in the groove, the groove having a top cheek and a bottom cheek, the recess being at the bottom of the top cheek, the bottom cheek (22) being shorter than the top groove cheek (24), the tongue having in its root portion a section of greater thickness than the remainder of the tongue (the part of the tongue having the lip), the thickness in the remaining portion of the tongue being connected to the thicker tongue portion via a linear tapered surface (the tapered surface provided by the lip 19), the top cheek of the board projects beyond the groove so that when assembled with an adjacent parquet board, the boards come into contact with each other (figure 4), the top end of the projecting tongue being in contact with the top cheeks of an adjacent board to form a surface (figure 4).

Tsai does not show a gradation being provided on the bottom groove cheek, which widens only a portion of the groove and a tapered surface being provided between the widened portion of the groove and the remainder of the groove.

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Moriau et al shows a gradation being provided on the bottom groove cheek, which widens only a portion of the groove and a tapered surface being provided between the widened portion of the groove and the remainder of the groove (figures 5-7, appendix B).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Tsai to show a gradation being provided on the bottom groove cheek which widens only a portion of the groove and a tapered surface being provided between the widened portion of the groove and the remainder of the groove because it would enable easy insertion of the tongue and groove together for easy assembly of two board members together.

(11) *Response to Argument*

With respect to applicant's argument to 112 second paragraph per claim 13, argument is persuasive. 112 second paragraph rejection to claim 13 is hereby withdrawn.

With respect to applicant's statements to the "flipping" or the "upper decorative surface atop a core", examiner respectfully points out that upper surface (7) certainly is decorative and it is even covered by a layer of backing layer (58). Altogether, the surface satisfies applicant's claim limitation of "upper decorative surface". The upper surface (7) certainly is atop a core, which is atop a bottom surface (55, 56). The argument is thus moot.

With respect to applicant's analysis of Moriau et al's structures with respect to the intended use of the structure, examiner respectfully points out that Moriau et al teaches applicant's claimed "decorative upper surface" and the accompanied claimed limitations as pointed out in the office action above. The argument is thus moot.

The interpretations of Moriau et al's structure with respect to the "upper decorative surface" is thus proper and maintained as set forth above.

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With respect to applicant's comments to amendments and arguments, examiner respectfully points out that the amendments and arguments were considered and the claims still found to be rejected as pointed out in the Advisory Action.

With respect to applicant's argument to claim 10, examiner respectfully points out that as marked in Appendix B, Moriau et al shows at least a small gap between the tapered surfaces of the groove (TP) and on the tongue (noted as TP2). The gap is thus defined by both the recited tapered surfaces. The argument is thus moot.

With respect to claim 12, applicant states that Roy et al does not show a tapered surface as it is circular or substantially circular, examiner respectfully disagrees. Figure 2 shows the part 12 tapering off at the end. The argument is thus moot. Also, with respect to claim 12, the rejection set forth in the Final Office action listing claims 12 and 13 under 103 is to show that claim 12 is depended upon claim 13. Claim 13 is rejected under 102 to Moriau et al. The Final Office action only points to the limitations in claim 12 when setting forth the 103 rejection, and thus clearly points to the rejection of only claim 12 under 103.

With respect to claims 4, 13-14 rejected under Tsai in view of Moriau et al, applicant states that Tsai does not show a parquet board, examiner respectfully disagrees. "Parquet" board is defined in Webster Dictionary tenth Edition as " the main floor of a theater". "Parquet" board thus requires that the structure be a floor structure. Tsai discloses the "insulating board" being used as a floor (col 1 line 9). It thus satisfies the definition of "parquet " board. Applicant further states that there is no motivation to combine the references as it is difficult to machine and one would not do so with a low quality product as insulating boards, examiner respectfully points out that the motivation for modifying the Tsai reference with Moriau is set forth above.

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The modification improves Tsai's structure and thus encourages and motivated. Applicant further states that there is no motivation to make the decorative upper surface with a décor, examiner respectfully points out that Tsai's structure shows a décor with the upper decorative surface and there is no need to modify the reference to show the décor. Also, the claims are to an "upper decorative surface" without any extra "décor" layer attached, the argument is thus moot.

Applicant also states Tsai does not show a linear tapered surface and that ridge 19 is not linear tapered surface, examiner respectfully disagrees. Figure 2 and 4 clearly shows the ridge 19 having a linear tapered surface extending from a horizontal surface. The argument is thus moot.

With respect to applicant's statement that Tsai does not show distal section having a smaller thickness, the smaller thickness being connected to the thicker tongue portion by a sharp but not tapered surface, examiner respectfully disagrees. Tsai's tapered surface 19 clearly forms a bridge between the smaller thickness of the tongue to the thicker tongue portion. The argument is thus moot.

With respect to applicant's argument that Moriau et al does not provide a gradation within the groove and thus does not widen a section of the groove, examiner respectfully disagrees. As pointed out above in the rejection, Moriau et al shows a gradation WP that widens a section of the groove. The combination thus reads on applicant's claimed limitations. The argument is thus moot.

With respect to applicant's arguments that the lip 19 is not a transition to the thicker portion of the tongue, examiner respectfully disagrees. The lip 19 connects the smaller portion

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to the thicker portion. It thus satisfies as a transition structure between the thicker and thinner portions of the tongue. The argument is thus moot.

Applicant states that Tsai does not show the boards come into contact with each other so as to form a useful top surface, examiner respectfully disagrees. First of all, the boards do come into contact with each other when assembled. Secondly, Tsai does show the top projects beyond the groove. Thirdly, Tsai's structure when assembled certainly forms a useful top surface. The argument is thus moot.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Phi Dieu Tran A

April 2, 2004

Conferees

PC



LM



STEVENS, DAVIS, MILLER & MOSHER, L.L.P.
Suite 850
1615 L Street, N.W.
Washington, DC 20036